

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

U.S. REAL ESTATE LIMITED
PARTNERSHIP and GILBANE
BUILDING COMPANY

v.

COLONIAL AMERICAN
CASUALTY AND SURETY
COMPANY, LEO RUSH
individually and LEO RUSH
d/b/a LEO RUSH INSURANCE

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C.A. No. 08-301ML

MEMORANDUM AND ORDER

Pending before the Court for determination (28 U.S.C. § 636(b)(1)(A), LR Cv 72) is Defendant Colonial American Casualty and Surety Company's ("Colonial") Motion to Overrule Plaintiffs' Objections and Compel Responses to its Interrogatories and Requests for Production. (Document No. 67). Plaintiffs U.S. Real Estate LP ("USRELP") and Gilbane Building Company ("Gilbane") object. (Document No. 73). A hearing was held on March 1, 2010. Colonial challenges USRELP's Responses to Interrogatory Nos. 6, 7, 9 and 10; and Document Request Nos. 6, 20, 21, 24, 25 and 28; and Gilbane's Responses to Interrogatory Nos. 8, 10, 11 and 13; and Document Request Nos. 10-14, 19, 23 and 24.

After considering the parties' arguments and reviewing the document Requests, Objections and Responses, the parties' disputes are resolved by the Court as follows:

A. USRELP

1. Interrogatory Nos. 6 and 7. USRELP's Objections are overruled and are stricken.

USRELP shall answer but limited to the period January 1, 2000 to the present.

2. Interrogatory No. 9. USREL P's Objections are deemed withdrawn in view of its counsel's representation at the hearing that it will answer this Interrogatory.

3. Interrogatory No. 10. USREL P's Objections are overruled and are stricken. USREL P shall answer this Interrogatory.

4. Document Request No. 6. USREL P's Objections are overruled and are stricken. USREL P shall produce responsive documents to Defendant in compliance with Fed. R. Civ. P. 34(b)(2)(E)(i) or reasonably identify where such documents may be found in the project file.

5. Document Request No. 20. USREL P's Objections are overruled and are stricken. USREL P shall produce responsive documents to Defendant in compliance with Fed. R. Civ. P. 34(b)(2)(E)(i) or reasonably identify where such documents may be found in the project file.

6. Document Request No. 21. USREL P's Objections are overruled and are stricken. USREL P shall produce responsive documents to Defendant in compliance with Fed. R. Civ. P. 34(b)(2)(E)(i) or reasonably identify where such documents may be found in the project file.

7. Document Request No. 24. USREL P's Objections are sustained. The request for all change orders on the Project is overly broad. In addition, Plaintiff Gilbane represents that it has produced all change orders relating to Fenestration and has made the project file available for review by Defendant's counsel, together with an index of change requests.

8. Document Request No. 25. USREL P's Objections are sustained. The request for all change orders on the Project is overly broad. In addition, Plaintiff Gilbane represents that it has produced all change orders relating to Fenestration and has made the project file available for review by Defendant's counsel, together with an index of change requests.

- 9. Document Request No. 28.** USRELP's Objections are overruled and are stricken.

USRELP shall produce any responsive documents in its possession, custody or control.

B. Gilbane

1. Interrogatory No. 8. Gilbane's Objections are overruled and are stricken. Gilbane shall answer but limited to the period January 1, 2000 to the present.

2. Interrogatory No. 10. Gilbane's Objections are deemed withdrawn in view of its counsel's representation at the hearing that it will answer this Interrogatory.

3. Interrogatory No. 11. Gilbane's Objections are sustained.

4. Interrogatory No. 13. Gilbane's Objections are overruled and are stricken. Gilbane shall answer this Interrogatory.

5. Document Request No. 10. Gilbane's Objections are overruled and are stricken. Gilbane shall produce any responsive documents in its possession, custody or control but limited to the period January 1, 2000 to the present.

6. Document Request No. 11. Gilbane's counsel confirmed at the hearing that it had withdrawn its claims of attorney work product or attorney-client privilege. Gilbane's remaining Objections are overruled and are stricken. Gilbane shall produce any responsive documents in its possession, custody or control.

7. Document Request No. 12. Gilbane's Objections are sustained.

8. Document Request No. 13. Gilbane's Objections are overruled and are stricken. Although Gilbane initially objected, it subsequently produced documents "without waiving said objection" and advised Defendant that the project file will be made available for review by its counsel. If Gilbane has not already produced all responsive documents in its possession, custody

or control, it shall produce responsive documents to Defendant in compliance with Fed. R. Civ. P. 34(b)(2)(E)(i) or reasonably identify where such documents may be found in the project file.

9. Document Request No. 14. Gilbane's Objections are overruled and are stricken. Gilbane shall produce responsive documents to Defendant in compliance with Fed. R. Civ. P. 34(b)(2)(E)(i) or reasonably identify where such documents may be found in the project file.

10. Document Request No. 19. Gilbane's Objections are overruled and are stricken. Gilbane shall produce responsive documents to Defendant in compliance with Fed. R. Civ. P. 34(b)(2)(E)(i) or reasonably identify where such documents may be found in the project file.

11. Document Request No. 23. Gilbane's Objections are overruled and are stricken. Gilbane shall produce responsive documents to Defendant in compliance with Fed. R. Civ. P. 34(b)(2)(E)(i) or reasonably identify where such documents may be found in the project file. In addition, Gilbane represents that it has produced all change orders relating to Fenestration and has made the project file available for review by Defendants' counsel, together with an index of change requests.

12. Document Request No. 24. Gilbane's Objections are overruled and are stricken. Gilbane shall produce responsive documents to Defendant in compliance with Fed. R. Civ. P. 34(b)(2)(E)(i) or reasonably identify where such documents may be found in the project file. In addition, Gilbane represents that it has produced all change orders relating to Fenestration and has made the project file available for review by Defendants' counsel, together with an index of change requests.

Conclusion

Colonial's Motion (Document No. 67) is GRANTED in part and DENIED in part as provided herein. Plaintiffs shall respond as ordered within twenty (20) days pursuant to Local Rule Cv 37(b).

SO ORDERED

/s/ Lincoln D. Almond
Lincoln D. Almond
United States Magistrate Judge
April 6, 2010